Supreme Court of the United States

OCTOBER TERM, 1969

No. 403

UNITED STATES OF AMERICA,

Petitioner,

—v.—

GERRITT JOHANNES VAN LEEUWEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Docket Entries	1
Indictment	4
Affidavit for search warrant	5
Search Warrant	7
Return on Search Warrant	9
Complaint	10
Commissioner's Final Commitment	11
Motion to suppress evidence	13
Affidavit in opposition to motion to suppress evidence	15
Agreed statement for record on appeal	18
Sentence Proceedings	21
Judgment and Commitment	22
Opinion of the court of appeals	23
Judgment of the court of appeals	27
Order granting petition for writ of certiorari	28

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

No. 51441

THE UNITED STATES

vs.

GERRITT JOHANNES VAN LEEUWEN

DOCKET ENTRIES

DATE	PROCEEDINGS
1968	
May 22	Filed Indictment.
May 24	Ent. Arraignment and Plea, not guilty.
"	Ent. order setting trial for June 24, 1968, 9:30 A.M. Remanded.
May 31	Filed Court Reporter's Transcript of Procedeings on 5-24-68.
June 4	Ent. order setting pretrial conference June 13, 1968, 9 a.m. Counsel notified.
Jun 13	Entered record of pretrial hearing. Any motions will be heard on June 21, 1968 at 3:00 P.M.
Jun 17	Filed Government's Praecipe. Issued 10 subpoenas in duplicate and in blank.
Jun 17	Filed Stipulation that coins offered in evidence are gold.
Jun 18	Filed Government's Trial Memorandum.

DATE	PROCEEDINGS
1968	
June 19	Filed Defendant's motion to suppress evidence and controvert search warrant.
"	Filed Memorandum in support of above motion.
Jun 20	Filed Plaintiff's Requested Instructions.
Jun 21	Filed Plaintiff's Memorandum of Authorities in Opposition to Defendant's Motion to Suppress Evidence, and Controvert Search Warrant.
Jun 21	Filed Affidavit of R. J. O'Hearn in Opposition to Defendant's Motion to Suppress.
Jun 22	Entered order denying motion to suppress.
June 24	ENT. RECORD OF TRIAL BY JURY (1st day) Paul Tveten, Reporter. Exhibits.
"	Filed Defendant's decision not to testify.
"	Ent. order denying motion for acquittal.
June 25	Filed Plaintiff's requested instructions.
"	ENT. RECORD OF TRIAL BY JURY (2nd day). Reporter Tveten.
"	Juror NO. 10 replaced by alternate Harry M. Frickelton.
"	Filed Verdict, Guilty as charged.
"	Imposition of sentence set for July 12, 1968, 9:30 a.m. Presentence report ordered. Deft. remanded.
July 3	Filed Defendant's Motion for Judgment of Acquittal, N.O.V., or in the alternative for a new trial.
July 3	Filed Defendant's Memorandum in Support of Motion for Judgment of Acquittal N.O.V., or in the alternative, for a new trial.

DATE	PROCEEDINGS
1968	
July 3	Filed Marshal's Return on Plaintiff's Subpoena to Testify-Charles A. Belgard and 1.
July 11	Filed Memorandum in Opposition to Defendant's Motion for Judgment of Acquittal Notwithstanding the Verdict or in the Alternative for a new trial. (7-12-68) Motion for New Trial Denied.
July 12	SENTENCE: Three years imprisonment and $1500.00 fine. Remanded.
July 12	Filed and entered Judgment and Commitment. Issued Commitment.
July 15	Filed Court Reporter's Transcript of Proceedings —6-12-68.
July 22	Filed Notice of Appeal.
"	Mailed duplicate Notice and Statement of Docket Entries to Clerk, U.S. court of Appeals.
"	Handed Copy of Notice to U.S. Attorney. Mailed copy to Defendant.
Jul 31	Filed Marshal's Return on Judgment and Commitment.
Aug 6	Entered Order granting 30 day extension to transmit record on appeal. Counsel notified.
Sep 16	Filed defendant's Motion and Affidavit for Extension of Time for Transmission of Record on Appeal.
Sep 16	Lodged Order Extending Time for Transmission of Record.
Sep 17	Filed Order Extending Time for Transmission of Record on Appeal to October 21, 1968.
Oct 17	Filed Transcript of Proceedings by Court Reporter, of June 24, 1968. (Clerk's file copy)
Oct 21	Filed Agreed Statement for Record on Appeal.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

No. 51441

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GERRIT JOHANNES VAN LEEUWEN, DEFENDANT

INDICTMENT—Filed May 22, 1968

The Grand Jury charges:

That on or about March 28, 1968, GERRIT JOHANNES VAN LEEUWEN did fraudulently and knowingly import and bring from a foreign country, namely Canada, into the United States at Blaine, Washington, within the Western District of Washington, Northern Division, merchandise, to wit, two packages, each weighing approximately ten pounds, containing a total of approximately 785 assorted gold coins, said importing and bringing being contrary to law, to wit, Title 19 U.S.C., Sections 1459 and 1461, and Title 31 U.S.C., Sections 442 and 443 and 31 C.F.R., Section 54.

All in violation of Title 18 U.S.C., Section 545.

A TRUE BILL

DATED: May 21, 1968.

/s/ [Illegible]
Foreman

/s/ Eugene G. Cushing
EUGENE G. CUSHING
United States Attorney

/s/ William H. Rubidge
WILLIAM H. RUBIDGE
Assistant U. S. Attorney

AFFIDAVIT FOR SEARCH WARRANT

Commissioner's Docket No. 10

Case No. 117

UNITED STATES OF AMERICA

vs.

TWO PACKAGES BEARING REGISTERED ARTICLE NOS. 1204 AND 1205; 1 PACKAGE ADDRESSED TO HARRY GORDON, P.O. BOX 2133, VAN NUYS, CALIFORNIA, THE OTHER PACKAGE ADDRESSED TO DAVIS CARR, P.O. BOX 7646, NASHVILLE, TENNESSEE

BEFORE WALTER J. RESEBURG, JR., 304 U.S. Courthouse, Seattle

The undersigned being duly sworn deposes and says:

That he has reason to believe that on the premises known as United States Post Office, Mount Vernon, Washington in the Western District of Washington there is now being concealed certain property, namely registered article No. 1204 bearing the return address of G. J. Williams, No. 8 Campus Village, Skagit Valley Junior College, Mount Vernon, Washington, addressed to Harry Gordon, P.O. Box 2133, Van Nuys, California; and registered article No. 1205 bearing the return address of G. J. Williams, No. 8 Campus Village, Skagit Valley Junior College, Mount Vernon, Washington, addressed to Davis Carr, P.O. Box 7646, Nashville, Tennessee, which are believed to contain gold coins which were brought into the United States in violation of Title 18, U.S.C. 545.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

1. Your affiant has information through United States Customs channels that the addressees on the packages in question are known dealers in the illegal traffic of gold coins. This information came from U.S. Customs Agents.

2. Your affiant has received information that when the packages were deposited with Post Office authorities in Mount Vernon, Washington, in response to an inquiry by the Postal Clerk to determine the contents of the packages, it was stated that the packages contained coins.

3. Each of the packages is insured for $10,000.

4. The residence indicated as the return address on each package is now unoccupied and has been unoccupied for six weeks.

5. Your affiant has information obtained from Capt. Charles Bellgard of Mt. Vernon Police Dept. indicating that the persons who mailed the packages at Mount Vernon, Washington, were driving an automobile with Canadian license plates.

/s/ R. J. O'Hearn,
R. J. O'HEARN
Signature of Affiant.
Customs Agent
Official Title, if any.

Sworn to before me, and subscribed in my presence, March 29, 1968.

/s/ Walter J. Reseburg, Jr.
United States Commissioner.

SEARCH WARRANT

Commissioner's Docket No. 10

Case No. 117

UNITED STATES OF AMERICA

vs.

TWO PACKAGES BEARING REGISTERED ARTICLE NOS. 1204 AND 1205; 1 PACKAGE ADDRESSED TO HARRY GORDON, P.O. BOX 2133, VAN NUYS, CALIFORNIA, THE OTHER PACKAGE ADDRESSED TO DAVIS CARR, P.O. BOX 7646, NASHVILLE, TENNESSEE

To R. J. O'Hearn, Customs Agent, or other authorized Customs Agent

Affidavit having been made before me by R. J. O'Hearn, Customs Agent that he has reason to believe that on the premises known as United States Post Office, Mount Vernon, Wash. in the Western District of Washington, there is now being concealed certain property, namely registered article No. 1204 bearing the return address of G. J. Williams, No. 8 Campus Village, Skagit Valley Junior College, Mount Vernon, Washington, addressed to Harry Gordon, P.O. Box 2133, Van Nuys, California; and registered article No. 1205 bearing the return address of G. J. Williams, No. 8 Campus Village, Skagit Valley Junior College, Mount Vernon, Washington, addressed to Davis Carr, P.O. Box 7646, Nashville, Tennessee, which are believed to contain gold coins which were brought into the United States in violation of Title 18, U.S.C. 545, and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the premises above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the place named for the property specified, serving this warrant and making the search in the daytime and if the

property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 29 day of March, 1968.

/s/ Walter J. Reseburg, Jr.
WALTER J. RESEBURG, JR.
U. S. Commissioner.

RETURN

I received the attached search warrant March 29, 1968, and have executed it as follows:

On March 29, 1968 at 6:30 o'clock PM, I searched the premises described in the warrant and

I left a copy of the warrant with MR. LELAND A. NOVOTNY together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Registry No. 1204 addressed to Harry J. Gordon, P. O. Box 2133, Van Nuys, California.

25 Austro Hungarian Coins 1915
100 U. S. $20 gold coins various dates

Registry No. 1205 addressed to Davis Carr, P. O. Box 7646, Nashville, Tenn.

660 Gold coins various denominations, countries of origin and dates.

This inventory was made in the presence of Donald Davis and Donald Peck, Postal Inspectors, Leland A. Novotny, Asst. Post Master, Robert S. Baker and Ronald D. Harding, Customs Agents and Charles Belgard, Captain, Mt. Vernon Police Department.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

/s/ R. J. O'Hearn

Subscribed and sworn to and returned before me this 8 day of April, 1968.

/s/ Walter J. Reseburg, Jr.,
U. S. Commissioner.

COMPLAINT

Commissioner's Docket No.

Case No.

Complaint for Violation of U. S. C. Title 18, Section 545

UNITED STATES OF AMERICA

v.

GERRIT JOHANNES VAN LEEUWEN

BEFORE RICHARD FLEESON, 215 Mason Building, Bellingham, Wn.

The undersigned complainant being duly sworn states:

That on or about March 28, 1968, at Blaine, Washington in the Western District of Washington, Northern Division, (1) GERRIT JOHANNES VAN LEEUWEN did (2) fraudulently and knowingly import and bring from a foreign country, namely Canada, into the United States, merchandise, to wit, 2 packages, each weighing approximately 10 pounds, containing a total of approximately 785 assorted gold coins, said importing and bringing being contrary to law, to wit, Title 19 U.S.C., Sections 1459 and 1461, and Title 31 U.S.C., Section 442 and 443 and 31 C.F.R., Section 54.

And the complainant states that he is the Customs Agent in Charge, stationed at Seattle; that his investigation reveals that on March 28, 1968, the defendant entered the United States from Canada at Blaine, Washington, having in his possession 2 packages containing gold coins, said coins not being declared and invoiced.

/s/ Raphael J. O'Hearn,
RAPHAEL J. O'HEARN
Signature of Complainant.
Customs Agent in Charge,
Official Title.

Sworn to before me, and subscribed in my presence, April 15, 1968.

/s/ Richard Fleeson,
United States Commissioner.

COMMISSIONER'S FINAL COMMITMENT

Commissioner's Docket No. 1

Case No. 312

UNITED STATES OF AMERICA

v.

GERRIT JOHANNES VAN LEEUWEN

To: The United States Marshal of the Western District of Washington;

You are hereby commanded to take the custody of the above named defendant and to commit him with a certified copy of this commitment to the custodian of a place of confinement within the Western District of Washington approved by the Attorney General of the United States where the defendant shall be received and safely kept until discharged in due course of law. The above named defendant was arrested upon the complaint of Raphael J. O'Hearn charging that on or about March 28, 1968, in the Western District of Washington, the defendant did fraudulently and knowingly import and bring from a foreign country, namely Canada, into the United States, merchandise, to-wit, 2 packages, each weighing approximately 10 pounds, containing a total of approximately 785 assorted gold coins, said importing and bringing being contrary to law, to-wit: in violation of U.S.C. Title 19 Sections 1459 and 1461, and Title 31 U.S.C. Section 442 and 443 and 31 C.F.R., Section 54, and he, (having duly waived preliminary examination before me on , 19) (after examination by me on , 19 , where it appeared that there is probable cause to believe that the offense so charged has been committed and that he has committed it[1]), has been directed to furnish bond in the sum of Five [/s/ R.F.] Thousand dollars ($5,000.00) [/s/ R.F.] for his appearance in the United States District court for the Western District of Washington at Seattle in accordance with all orders and di-

rections of the court relative to his appearance before the court, and he has failed to do so.

Dated: April 15, 1968.

/s/ Richard Fleeson,
United States Commissioner.

RETURN

Received this commitment and designated prisoner on 4/26, 1968, and on 4/26, 1968, committed him to Whatcom County Jail pending transfer, and left with the custodian at the same time a certified copy of this commitment.

Dated: ....., 19....

/s/ Raphael J. O'Hearn,
United States Marshal.
Customs Agent in Charge.
District of

By .....
Deputy

[Caption Omitted]

MOTION TO SUPPRESS EVIDENCE AND CONTROVERT SEARCH WARRANT—Filed June 19, 1968

The Defendant, GERRIT JOHANNES VAN LEEUWEN, moves by his attorney, CRAIG G. DAVIS, for an order pursuant to Rule 41 (e) of the Federal Rules of Criminal Procedure that all evidence, oral or tangible, be suppressed which was obtained directly or indirectly from:

(a) The arrest, detention and interrogation of the Defendant on April 12, 1968, said arrest, detention and interrogation being in violation of Defendant's constitutional rights and right to prompt arraignment under Rule 5 (a) of the Federal Rules of Criminal Procedure.

(b) The search and seizure of property from premises known as the United States Post Office located in Mount Vernon, Washington, on March 29, 1968, said search and seizure being in violation of Defendant's rights under the Fourth Amendment to the United States Constitution.

As grounds for this motion, counsel for the Defendant states:

1. The Defendant is charged in a one-count indictement alleging violation of Title 18 U.S.C., Section 545 that is, fraudulently and knowingly importing and bringing from a foreign country undeclared merchandise, namely gold coins.

2. On April 13, 1968, Defendant was arrested at the Whatcom County Jail, located in Bellingham, Washington, by virtue of a formal WARRANT OF ARREST issued by Richard Fleeson, United States Commissioner. Prior to that time Defendant was stopped at or about 9 to 9:30 p.m. at the U. S. boarder at Blaine, Washington and held for a period of time until approximately 2:30 a.m., April 13, at which time he was interrogated by customs officials. He was not advised of his right to counsel and, after interrogation of his two companions, was placed under arrest. This arrest was made without

a warrant and without probable cause to believe that the Defendant has committed a felony.

3. Prior to his formal arrest, the Defendant together with his companions, was forcibly detained at the border and held for a period of time exceeding five hours without being charged. He was then questioned by customs officials from Seattle, Washington but was not informed of his right to counsel. He requested permission to telephone but this was denied and the questioning continued. He was thereupon deposited in the Whatcom County Jail located in Bellingham, Washington and held over the weekend and was arrested as noted above on April 15, 1968. He was not brought before the United States Commissioner for at least three days. The delay in arraignment was unnecessary and in violation of his rights under Rule 5 (a), Federal Rules of Criminal Procedure. In addition, the nature of the questioning of Defendant and his companions, without counsel, make the statements made involuntary and the result of violations of the Fourth, Fifth, and Sixth Amendments of the United States Constitution.

4. Said seizure was unlawful because:

(a) it was made pursuant to a warrant and affidavit relying on hearsay evidence;

(b) it was made pursuant to a warrant and affidavit which did not allege facts sufficient to support a belief that the property sought was on the premises of the United States Post Office located in Mount Vernon, Washington;

(c) it was made pursuant to a search warrant issued as a result of an affidavit which stated facts not within the affiant's own knowledge;

(d) said package was illegally detained for a period of approximately eighteen hours contrary to law, in order that a search warrant could be issued to search the parcel.

(e) it was made pursuant to an illegal and unauthorized detention by postal authorities on their own behalf or at the behalf of the customs agents, all in violation of Defendant's rights under the Fourth Amendment of the United States Constitution.

WHEREFORE, Counsel respectfully prays that the Court order the suppression of all evidence resulting from the official illegality alleged herein.

DATED: June 18, 1968.

Respectfully submitted,

/s/ Craig G. Davis
CRAIG G. DAVIS
Attorney for Defendant
421 B.N.B. Bldg.
Bellingham, Washington 98225
Tel. (206) 733-8191

[Caption Omitted]

AFFIDAVIT OF R. J. O'HEARN IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS—Filed June 21, 1968

The undersigned, being first duly sworn on oath, deposes and says that he is the Agent in charge of the Seattle office of the United States Customs Agency Service.

That at approximately 2:35 p.m. on March 28, 1968, he received information by telephone from Sgt. James McKenzie, Royal Canadian Mounted Police, Vancouver, B. C., that two parcels, each being approximately 8″ x 6″ x 2″ in size and weighing approximately 15 pounds apiece, were mailed at the United States Post Office, Mount Vernon, Washington.

That, further, each package was insured for $10,000 and they were addressed to specific individuals in Van Nuys, California, and Nashville, Tennessee.

That Captain Charles A. Belgarde, Police Department, Mount Vernon, Washington, had information that the packages were deposited in the mail by persons riding

in a 1966 maroon-colored Ford Mustang automobile bearing B. C. license plates.

That following this telephone conversation, he immediately called the Customs Agent in charge, Los Angeles, California, where one of the packages was to be delivered, and was told that the Customs Office covering that particular area had the addressee of the package under investigation for engaging in the illegal traffic in gold coins.

That early the following morning (March 29, 1968), he called the Customs Agent in charge, Mobile, Alabama, which officer has jurisdiction over Nashville, Tennessee, and was told that the Customs Office covering that particular area had the addressee under investigation for engaging in the illegal traffic of gold coins.

That he informed the Postmaster and Postal Inspector in charge, Mount Vernon, Washington, that he had probable cause to believe the packages had been smuggled into the United States from Canada and that they contained illegal gold coins.

That he continued investigation without undue delay and in the early afternoon of March 29, 1968, obtained a search warrant to open the packages which had been deposited in the mail in the Post Office at Mount Vernon, Washington. Pursuant to the authority indicated in the search warrant, the packages were opened and found to contain approximately 780 gold coins of various types.

That on April 12, 1968, at approximately 9:30 p.m., he received information that GERRIT JOHANNES VAN LEEUWEN, along with two other individuals, had attempted to enter the United States at the border at Blaine, Washington, and were then detained at United States Custom station at the border. This affiant immediately left in the company of Robert Baker, United States Custom's Agent, for the Customs station at Blaine, Washington, where they arrived at approximately 1:00 a.m., April 13, 1968.

That he was present when Agent Baker advised GERRIT JOHANNES VAN LEEUWEN of his rights under the United States Constitution and was present when MR. VAN LEEUWEN indicated that he wished to re-

main silent. MR. VAN LEEUWEN did not make a statement either before or after arrest in the early morning of April 13, 1968, nor has he made any statement, written or oral, to United States Customs Agents at any time subsequent to his arrest.

That GERRIT JOHANNES VAN LEEUWEN was placed in the custody of the sheriff of Whatcom County at approximately 4:30 a.m. on Saturday, April 13, 1968. That on April 15, 1968, at 3:00 p.m., he was taken before U. S. Commissioner Richard Fleeson, Bellingham, Washington, at which time a complaint charging him with violation of Title 18 U.S.C., Section 545, was filed.

That this affidavit is being made in opposition to the defendant's motion to suppress the evidence in this matter.

Dated this 21st day of June 1968.

/s/ R. J. O'Hearn
R. J. O'HEARN

Subscribed and sworn to before me on this 21st day of June, 1968.

/s/ [Illegible]
Notary Public

[Caption Omitted]

AGREED STATEMENT FOR RECORD ON APPEAL

ISSUE

WHETHER THE DEFENDANT'S CONSTITUTIONAL RIGHTS UNDER THE 4th AMENDMENT WERE VIOLATED BY THE DETENTION OF DEFENDANT'S FIRST CLASS MAIL BY EITHER THE POSTAL AUTHORITIES OR THE CUSTOM'S OFFICIALS, OR BOTH; AND/OR

WHETHER DEFENDANT'S MOTION, MADE PURSUANT TO F.R.C.P. 41(e), SHOULD HAVE BEEN GRANTED.

PRESENTATION OF ISSUE IN DISTRICT COURT

The issue was first brought to the Court's attention in a "MOTION TO SUPPRESS EVIDENCE AND CONTROVERT SEARCH WARRANT", said motion being denied.

The issue was again raised during trial by oral motion and was denied.

It was presented for the final time in a *"MOTION FOR JUDGMENT OF ACQUITAL NOTWITHSTANDING THE VERDICT, OR, IN THE ALTERNATIVE, FOR A NEW TRIAL"*, said motion being denied and the court stating that it did not feel the packages were illegally detained.

FACTS ESSENTIAL TO THE ISSUE PRESENTED

The jury, by its verdict, found that the Defendant crossed the United States Border at Blaine, Washington, with two packages in his possession which were not declared, said packages containing gold coins.

In the "Affidavit for Search Warrant" we find that the Defendant mailed two packages at the Mount Vernon, Washington, Post Office to two different addresses—one in California and one in Tennessee. That the return address showed G. J. Williams, # 8 Campus Village,

Skagit Valley Junior College, Mount Vernon, Washington. That the packages were sent registered mail and declared to contain coins or a coin collection and that each package was insured for $10,000.

The testimony of Gerald D. Thomsen, a postal clerk in the United State Post Office at Mount Vernon, Washington, shows that the proper postage and rates were paid.

The testimony of Fred Sopow shows that the packages were mailed at approximately 1:30 p.m. on Thursday, March 28, 1968. A search warrant was issued on Friday, March 29, 1968 at 3:00 p.m. in Seattle and was duly served in Mount Vernon at 6:30 p.m.

The contents of the packages were gold coins as shown by the inventory attached to the return on the search warrant.

The testimony of Raphael J. O'Hearn, Customs Officer, shows that he knew about the parcels sometime between 2:00 p.m. and 3:00 p.m. on Thursday, March 28, 1968.

The assistant Post Master of the Mount Vernon Post Office testified that he was suspicious of the contents of the packages and that he was concerned as to their mailability. Further, his testimony at the pretrial hearing indicated that he felt it was his duty to seek an advisory opinion as to whether or not the packages should be dispatched to their destination.

Testimony given and elicited at the trial indicated that Mr. Thomsen, the postal clerk, and a Captain Belgard of the Mount Vernon Police Department, who happened to be on the premises at the time, were suspicious of the men mailing the packages. Captain Belgard called a Sergeant James E. McKenzie of the R.C.M.P. in Vancouver, B. C., Canada, who in turn passed the information on to customs officer O'Hearn. Officer O'Hearn in

turn contacted the Postal Inspector in Mount Vernon and verified the packages.

APPROVED this 21 day of October, 1968.

/s/ William T. Beeks
Judge
United States District Court

Presented by:

/s/ Craig G. Davis
CRAIG G. DAVIS
Attorney for Defendant

Approved:

/s/ William H. Rubidge
For United States Attorney

[Caption Omitted]

SENTENCE PROCEEDINGS—July 12, 1968

[fol. 1] THE CLERK: United States versus Gerrit Johannes Van Leeuwen, Cause No. 51441.

MR. RUBIDGE: Your Honor, this matter is on for imposition of judgment and sentence. I believe preliminarily that the defendant has a motion that he wishes to argue at this time.

[fol. 2] THE COURT: Yes, I think the Court indicated that he could argue his postrial motions that he has filed at this time. He may do so.

(Mr. Davis presented oral argument to the Court.)

THE COURT: The motion will be denied. The defendant may come forward for sentence.

MR. DAVIS: If the Court please, may I have the particular reason the Court is using for the denial of the motion?

THE COURT: I deny it on general grounds. You just have not satisfied me that this judgment is contrary to the evidence. I found the seizure was perfectly proper, and I also found that the evidence was overwhelming as to this defendant's guilt. I am convinced beyond a reasonable doubt of all aspects of it.

MR. DAVIS: Thank you, your Honor.

• • • •

JUDGMENT AND COMMITMENT

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

No. 51441

UNITED STATES OF AMERICA

v.

GERRIT JOHANNES VAN LEEUWEN

On this 12th day of July, 1968 came the attorney for the government and the defendant appeared in person and [1] with his appointed counsel Craig Davis.

IT IS ADJUDGED that the defendant has been convicted upon his plea of [2] not guilty, and a verdict of guilty of the offense of violation of Title 18 U.S.C. Section 545, as charged in the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [4] three (3) years and fined the sum of fifteen hundred dollars ($1,500).

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ William T. Beeks,
United States District Judge.

Presented by:

/s/ William H. Rubidge
WILLIAM H. RUBIDGE
Assistant U. S. Attorney

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23449

UNITED STATES OF AMERICA, APPELLEE

vs.

GERRITT JOHANNES VAN LEEUWEN, APPELLANT

(May 29, 1969)

On Appeal from the United States District Court for the Western District of Washington, Northern Division

Before: CHAMBERS and KOELSCH, *Circuit Judges*, and * SOLOMON, *District Judge*

SOLOMON, *District Judge:*

Gerritt Johannes Van Leeuwen was convicted of illegally importing gold coins into the United States in violation of 18 U.S.C. § 545. He claims the post office violated the Fourth Amendment when it detained two first class packages without a warrant. He also claims an affidavit in support of a search warrant was insufficient. We reverse on the basis of Appellant's first claim.

On March 28, 1968, at about 1:30 P.M., Appellant mailed two twelve-pound packages at the post office in Mount Vernon, Washington. He sent both packages by first class mail and insured each for $10,000. Appellant told the postal clerk that the packages contained coins. As appellant was leaving the post office, the clerk told Captain Belgard of the Mount Vernon police that he was suspicious of the packages. Captain Belgard noticed that Appellant's car had British Columbia license plates and that the return address on the packages was a vacant housing area of a neighboring junior college.

* Honorable Gus J. Solomon, United States District Judge, District of Oregon, sitting by designation.

Captain Belgard called Sergeant McKenzie of the Canadian police, who, in turn, called R. J. O'Hearn, Customs Officer-in-charge at Seattle, Washington. At about 3:00 P.M. O'Hearn called the Customs office in Van Nuys, California, the destination of one of the packages. He learned that the addressee was under investigation for trafficking in illegal coins. O'Hearn could not reach the Customs office at Nashville, Tennessee, the destination of the other package, because of the time difference. When he called the next morning, he learend that the addressee of the second package was also suspected of trafficking in gold coins. O'Hearn secured a search warrant and opened the packages at 6:30 P.M. on March 29. The Mount Vernon post office detained the packages for 29 hours, between the time they were mailed and the execution of the warrant. No judicial officer authorized this detention.

First class mail is protected by the Fourth Amendment. *Ex Parte Jackson*, 96 U.S. 727 (1878). *Oliver* v. *United States*, 239 F. 2d 818 (8th Cir. 1957). In *Lustiger* v. *United States*, 386 F. 2d 132 (9th Cir. 1967), the Court said:

> "The protection against unreasonable search and seizure of one's papers or other effects, guaranteed by the Fourth Amendment extends to their presence in the mails * * *. Thus, first class mail *cannot be seized and retained*, nor opened and searched, without the authority of a search warrant." 386 F. 2d 139. (Emphasis added.)

The Fourth Amendment protects "the right of the people to be secure * * * in their papers and effects, against unreasonable searches and seizures." The information known to Captain Belgard immediately after Appellant mailed the packages would reasonably have justified a brief detention, without a warrant, while a further investigation could be made. *Terry* v. *Ohio*, 392 U.S. 1, 20-21 (1968); *cf. Warden* v. *Hayden*, 387 U.S. 294 (1967).

By 3:00 P.M., O'Hearn knew that the addressee of one of the packages was under investigation for traffick-

ing in gold coins. This additional fact supplied probable cause to search the packages. Instead, O'Hearn decided to wait until the following day so he could call the customs office at the destination of the second package. This decision represents an understandable exercise of caution. Nevertheless, as a result of this delay, the packages were detained for 29 hours at the post office. This period was unreasonably long, and the officers should have obtained a warrant authorizing the detention. *Katz* v. *United States*, 389 U.S. 347 (1967); *Lustiger* v. *United States*, *supra*; *see Davis* v. *Mississippi*, * * * U.S. * * *, 37 USLW 4359 (1969); *Camara* v. *Municipal Court*, 387 U.S. 523 (1967).

In *Katz*, the Government urged the Court to "retroactively validate" the conduct of its agents who had eavesdropped on the defendant's telephone conversations. The Government argued that the agents "did no more than they might properly have done with prior judicial sanction." 389 U.S. at 356. The Court rejected this argument:

> "It is apparent that the agents in this case acted with restraint. Yet the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer * * *. Searches conducted without warrants have been held unlawful 'notwithstanding facts unquestionably showing probable cause,' * * * for the Constitution requires 'that the deliberate, impartial judgment of a judicial officer * * * be interposed between the citizen and the police * * *.'" 389 U.S. at 356-57.

In the present case, the length of time that the packages were retained by the post office made prior judicial authorization necessary.

The Government cites *United States* v. *Beckley*, 335 F. 2d 86 (6th Cir. 1964). There, the package involved was mailed from outside the country and was not in first class mail.

The Government also claims that Appellant has no standing to object to the seizure because he was not the addressee or the return addressee of the packages. There

is no merit to this contention. *Jones* v. *United States*, 362 U.S. 257 (1960).

The seizure of Appellant's packages violated his rights under the Fourth Amendment and the gold coins should not have been admitted in evidence. *Weeks* v. *United States*, 232 U.S. 383 (1914).

Reversed.

CHAMBERS, *Circuit Judge*, concurring:

I think I am as sensitive as anyone to the Fourth Amendment in protecting one's person and one's home. But the detention of Van Leeuwen's "hot money" at the post office for 29 hours does not offend me very much. Someone in the post office holds up much of my mail over 29 hours.

I concur in the reversal only because I think precedent, which we must follow, requires us to reverse.

JUDGMENT

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23449

UNITED STATES OF AMERICA, APPELLEE

vs.

GERRIT JOHANNES VAN LEEUWEN, APPELLANT

Appeal from the United States District Court for the Western District of Washington, Northern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington, Northern Division and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed.

Filed and entered May 29, 1969.

SUPREME COURT OF THE UNITED STATES

No. 403, October Term, 1969

UNITED STATES, PETITIONER

v.

GERRIT JOHANNES VAN LEEUWEN

ORDER ALLOWING CERTIORARI—Filed October 27, 1969

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 369721 350